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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,004	08/01/2008	Gianni Collina	FE 6159 (US)	8569
34872	7590	06/15/2009		
Basell USA Inc. Delaware Corporate Center II 2 Righter Parkway, Suite #300 Wilmington, DE 19803			EXAMINER WRIGHT, SONYA N	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			06/15/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/584,004	Applicant(s) COLLINA ET AL.	
	Examiner SONYA WRIGHT	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13, 15 and 18-24 is/are rejected.
- 7) ☒ Claim(s) 14, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/13/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 13-24 are pending in this application.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13, 15, and 18-24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4-6, 8-12, 19-22, 25, 26, and 28 of copending Application No.

10/537,079, Diego et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the ‘079 application teaches a genus that significantly overlaps with the instant claims. Note that the ‘079 claims referred to are the amended claims filed January 3, 2007.

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In claim 1 of the '079 application, the ranges of m and n (which correspond to n and p respectively, in instant claim 13), overlap with the ranges in the instant claims. In the '079 application, m is from 0.05 to 2.5, and n is from 0.07 to 6. In instant claim 13, n is from 2 to 6 and for p, there is no lower limit, but the upper limit is ≤ 0.1 .

In the '079 application, the Lewis adduct and titanium compounds each have a small list of components. Due to the small lists, one would be motivated to prepare the instant invention.

Accordingly, the instant invention is obvious over the '079 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Rejection under 35 U.S.C. 102(b)

Claims 13 and 18-24 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 395,083 Sacchetti et al.

Sacchetti et al. teach examples of the instant claims, when in instant claim 13, n is 2, p is 0 and LB is absent; in instant claim 19, n is 0 and y-n is 4, X is chlorine, and R is absent; in instant claim 20, the titanium compound is TiCl_4 ; and in instant claim 24 (see especially Example 6 of Sacchetti et al.), the olefin is propylene. In Sacchetti et al. see Examples 1-6 on pages 6-9. Also in Sacchetti et al. see page 3, line 46 which states that there are not greater than 2 moles of alcohol contents per MgCl_2 mole. Finally, in Sacchetti et al., see page 2, lines 49-50 and page 3, lines 55-56 which state that an electron-donor compound can be used in the invention.

Rejection under 35 U.S.C. 102(e)

Claims 13, 15, and 18-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Diego et al., Patent Application Publication 2006/0025300 (U.S. Patent Application 10/537,079). Diego et al. teach specific examples of the instant invention in page 5, paragraphs [0043]-[0049] and page 6, paragraph [0050]. Diego et al. anticipate the instant claims when, in the instant claims LB is selected from ethers and esters; n and p are as defined; in instant claim 19-- X is chlorine, n is 0 and y-n is 4; and in instant claim 24-- R is as defined.

The applied reference has a common assignee and inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35

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U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Claim Objections

Claims 14, 16, and 17 are objected to as being dependent upon a rejected base claim.

X References from the International Search Report

U.S. 6,417,132 and WO 2004/085495 are listed as X references on the International Search Report. The references have not been used in an art rejection herein because they encompass the same scope as EP 395,083 used in the rejection under 35 U.S.C. 102 supra, and are therefore considered merely cumulative.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SONYA WRIGHT whose telephone number is (571)272-5857. The examiner can normally be reached on 8:30 am to 5:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James J. Seidleck/
Supervisory Patent Examiner, Art Unit 1796

/SONYA WRIGHT/
Examiner, Art Unit 1796